



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Glenn M. Willard, Esquire
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, D.C. 20037

MAR 22 2017

Re: MUR 7095
RGA Right Direction PAC
Michael Adams, Treasurer

Dear Mr. Willard:

On July 8, 2016, the Federal Election Commission notified your clients, RGA Right Direction PAC and Michael Adams in his official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on March 15, 2017, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

The Act and the Commission's regulations require that all public communications (such as a television advertisement) by a political committee carry a disclaimer that includes a clearly readable written statement that the political committee "is responsible for the content of this advertising." The Commission cautions RGA Right Direction PAC and Michael Adams in his official capacity as treasurer to take steps to ensure that their conduct is in compliance with the Act and the Commission's regulations.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a long horizontal flourish extending to the right.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1-20463-1-10831

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6 **RESPONDENTS:** RGA Right Direction PAC MUR: 7095
7 and Michael Adams in his
8 official capacity as treasurer
9

10 **I. INTRODUCTION**

11 The Complaint alleges that RGA Right Direction PAC ("RGA PAC") and Michael
12 Adams in his official capacity as treasurer (the "Committee") failed to include a complete
13 disclaimer on two television advertisements that it aired in June 2016 opposing Indiana
14 gubernatorial candidate John Gregg. The Committee acknowledges that the disclaimers for the
15 advertisements failed to state in writing that RGA PAC is responsible for the content of the
16 advertisement, but argues that the disclaimer requirements are inapplicable because the
17 advertisements did not mention a federal candidate.

18 Although federal political committees are required to include complete disclaimers on all
19 public communications, regardless of content, the Commission dismisses the allegation that the
20 Committee failed to comply with 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11, but sends a
21 caution letter to the Committee.

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **A. Facts**

24 RGA PAC is an independent expenditure-only political committee registered with the
25 Commission, and Michael Adams is its treasurer.¹ RGA PAC aired two television

¹ Amended Statement of Organization, RGA PAC (June 8, 2012),
<http://docquery.fec.gov/pdf/939/12971260939/12971260939.pdf>

1 advertisements, titled "Twins" and "Facts," in Indiana on or about June 6, 2016.² The
2 Committee disclosed to the Commission disbursements totaling \$1,295,472 for the two
3 advertisements.³ The two advertisements, which opposed Gregg, did not mention a federal
4 candidate nor refer to a federal election.⁴

5 Both advertisements contain the following audio disclaimer: "RGA Right Direction PAC
6 is responsible for the content of this advertising."⁵ Neither advertisement includes a complete
7 written disclaimer stating that RGA PAC is responsible for the content of the advertisement
8 ("content responsibility statement"). The "Twins" advertisement contains a written disclaimer
9 stating: "Paid for by RGA Right Direction PAC, 202-662-4162 and not authorized by any
10 federal candidate or candidate's committee," while the "Facts" advertisement contains a similar
11 written disclaimer stating: "Paid for by RGA Right Direction PAC, 202-662-4162 and not
12 authorized by any candidate or candidate's committee."⁶ The Complaint alleges that the
13 advertisements violated the disclaimer requirements by not including a written content
14 responsibility statement.⁷

² Compl. at 2 (July 1, 2016); <https://www.youtube.com/watch?v=fPRim6SRNrM&feature=youtu.be>;
https://www.youtube.com/watch?v=G0Tp_kM_3xI&feature=youtu.be.

³ Committee Resp. at 2 (Aug. 31, 2016); 2016 July Quarterly Report, RGA PAC (July 14, 2016),
<http://docquery.fec.gov/pdf/809/201607149020457809/201607149020457809.pdf>. The disbursements are described
as "Non-Federal Media Placement" in the report.

⁴ Committee Resp. at 2.

⁵ *Id.* Available information shows that the "Facts" advertisement may also be titled "Factoids."
http://ecmsuite.fec.gov/ecimprd/llisapi.dll/fetch/2000/23676/367992/367912/3788364/3788365/MUR_7095_Contract_873774.pdf?nodeid=4082238&vernum=-2.

⁶ Compl. at 2.

⁷ *Id.* at 2-3.

1 The Committee concedes the missing written content responsibility statement on the two
2 advertisements, but argues that the disclaimer requirements are inapplicable because the
3 advertisements do not refer to a federal candidate.⁸

4 **B. Analysis**

5 The Federal Election Campaign Act of 1971, as amended (the "Act") and the
6 Commission regulations require that all public communications (such as a television
7 advertisement) by a political committee carry disclaimers.⁹ Unlike the disclaimer requirements
8 for public communications by persons other than political committees, the disclaimer
9 requirement for public communications by political committees applies without regard to the
10 content of the communication.

11 If the communication is not authorized by a federal candidate, his authorized committee
12 or its agents, the communication must clearly state the name and permanent street address,
13 telephone number, or World Wide Web address of the committee and state that the
14 communication is not authorized by any candidate or candidate's committee.¹⁰ A television
15 advertisement must also include both audio and clearly readable written statements that the
16 political committee "is responsible for the content of this advertising."¹¹

⁸ Committee Resp. at 2-3.

⁹ 52 U.S.C. § 30120(a); 11 C.F.R. §§ 110.11(a)(1), 100.26 (defining public communication).

¹⁰ 52 U.S.C. § 30120(a)(3); 11 C.F.R. 110.11(a)(3).

¹¹ 52 U.S.C. § 30120(d)(2); 11 C.F.R. 110.11(c)(4).

1 The record shows that the two television advertisements failed to include the written
2 "content responsibility statement."¹² Notwithstanding this deficiency, the Commission has not
3 pursued disclaimer violations in past matters where the disclaimer was incomplete but contained
4 sufficient information to indicate that the sponsor had authorized the communication.¹³ The
5 television advertisements in question provided such identifying information. Thus, the
6 Commission dismisses as a matter of prosecutorial discretion the allegation that the Committee
7 violated 52 U.S.C. § 30120(a) and (d)(2) and 11 C.F.R. § 110.11(a)(1) and (c)(4)¹⁴ but cautions
8 the Committee against additional violations of the Act's disclaimer requirements.¹⁵
9

¹² The Committee argues that the disclaimer requirements are inapplicable to the two nonfederal advertisements and claims that it "made an anonymous call to the FEC's Information Division on July 14, 2016, at 10:47 am on the question at issue in this matter and was told without hesitation that the Commission's disclaimer requirements do not apply to advertisements by political committees that mention only candidates for state office." Committee Resp. at 1, 2-3. The Committee's counsel does not indicate who he purportedly spoke to in the Information Division, and the Information Division does not maintain records as to such calls.

Even if counsel called the Information Division regarding this question, the Committee's position is untenable. The Act plainly requires appropriate disclaimers on all public communications of a political committee. In adopting its corresponding disclaimer regulations, the Commission recognized that Congress expanded the scope of the disclaimer requirement for political committees, and the Commission concluded that the expansive phrase "any communication" in 52 U.S.C. § 30120(a) shows that the disclaimer requirements apply to "all" of a political committee's enumerated communications. Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, Final Rules, 67 Fed. Reg. 76962, 76964 (Dec. 13, 2002).

¹³ See MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

¹⁴ *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁵ See, e.g., MUR 6683 (Fort Bend County Democratic Party) (dismissing violation and sending a caution letter where disclaimer was incomplete but contained some information identifying the payor); MUR 6633 (Republican Majority Campaign PAC) (same), MUR 6438 (Art Robinson for Congress) (same), and MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (reminding committee concerning the use of appropriate disclaimers).